# RECENT IMPORTANT DECISIONS

ACKNOWLEDGMENT—USE OF "HE" INSTEAD OF "THEY."—A certificate of acknowledgment, stating that the grantors, naming them separately, appeared before the notary and acknowledged that "he" executed the instrument, etc., was *Held* insufficient to entitle the instrument to be admitted in evidence as a recorded instrument. *Kane et al.* v. *Scholars et al.* (1905), — Tex. —, 90 S. W. Rep. 937.

Where an instrument is defectively acknowledged it is not entitled to be introduced as evidence of title without proof of execution. But a mere clerical error will not vitiate a certificate of acknowledgment, and the court in the case of *McCardia* v. *Billings* (1901), 10 N. Dak. 373, 87 N. W. 1008, where a similar state of facts existed, said "that they would construe the language of certificates of acknowledgment liberally and hold them valid if that could be done by a fair and reasonable construction of the language used," and held that the use of "he" instead of "they" was a mere clerical error. In the case of *Montgomery* v. *Hornberger* (1897), 16 Tex. Civ. App. 28, there was a similar holding in regard to the use of "the" for "they." While the courts have been very exacting in regard to certificates of acknowledgment of married women (*Sarazin* v. *Railroad* (1900), 153 Mo. 479; 55 S. W. 92), there seems to be no very good reason for such stringency in the principal case.

ADVERSE POSSESSION—EASEMENT—LICENSE—LEGAL MAXIM.—B, having no outlet from his farm to the highway, in 1859 obtained of W, the owner of the land adjoining, a written license by which was granted the right to use the south twenty feet of W's land as a private road. B and his successors and grantees used this strip as a private way for 36 years. W died in 1876. In 1895 the plaintiff, the owner of part of the W estate, fenced up the right of way, and the fence being torn down, rebuilt it the same year. In 1903 defendant, the present owner of the B estate, tore down the fence, and for this alleged act of trespass the suit is brought. *Held,* that defendant could set up a claim of title by adverse possession continued for the statutory period, without showing distinct notice of an adverse claim other than that implied by his continued use. *Toney* v. *Knapp* (1906), — Mich. —, 106 N. W., — 12 Detroit Legal News 872.

The defendant's position was that, inasmuch as the license given by W in 1859 was revoked by his death and the conveyance of the property by his heirs, the continued use of the right of way by the licensee became open, hostile and notorious, although no notice was given by him or act or word said to indicate to the licensor that he intended to convert at once a permissive use into a notoriously hostile one. This position was sustained by the court, three justices vigorously dissenting. The ground taken by the minority was that to constitute adverse possession, the possession relied on must have been so open and notorious as to show knowledge in the plaintiff and that in the absence of other showing, the maxim "Every one is presumed to know the law," alone is insufficient to fix knowledge on the plaintiff

of an adverse possession having its inception solely by operation of law. The dissenting justices cited with approval: *Regina* v. *Mayor of Tewksbury*, L. R. 3 Q. B. 628; *Martindale* v. *Falkner*, 2 C. B. 719. On open, visible and notorious possession by the adverse claimant the law presumes notice to the true owner. *Black* v. *Tenn., etc., R. Co.*, 93 Ala. 109, 9 So. Rep. 537; *King* v. *Carmichael*, 136 Ind. 20, 35 N. E. 509, 43 Am. St. Rep. 303. But where possession is originally taken and held under the true owner, a clear, positive and continued disclaimer and disavowal of title and an assertion of an adverse right brought home to the true owner are indispensable before any foundation can be laid for the operation of the statute of limitations. *Lewis* v. *N. Y., etc., R. Co.*, 162 N. Y. 202, 56 N. E. Rep. 540; *Smith* v. *Stevens*, 82 Ill. 554. In a case based on similar facts and involving a claim of adverse possession based on the revocation of a license by operation of law (by the transfer by the licensee), it was held that such a revocation does not start the statute nor lay the foundation for adverse possession until an adverse holding is declared and notice of such change is brought to the knowledge of the owner. *Cameron* v. *Chicago, etc., Ry. Co.*, 60 Minn. 100, 61 N. W. Rep. 814. In the principal case it is intimated that a distinction might be drawn when the revocation by operation of law is caused by the act of the licensee. But it is believed that on principle such distinction cannot be made with this result, for both revoke by operation of law and their incidents in that regard should be the same.

ATTACHMENT—CONFLICT OF JURISDICTION—STATE AND FEDERAL COURTS.—Plaintiffs, as receivers of the National Salt Company, were authorized to sell its real property May 25, 1904, but the title thereto yet remains in them. Previously, Nov. 6, 1901, a warrant of attachment on this property had been issued in a suit in the federal court by Ingraham against said company, and Aug. 9, 1904, he obtained judgment. Thereupon, the marshal advertised for sale all the right, title, and interest which the National Salt Company had in and to said real estate in Wyoming County. The complaint states (1) that no valid lien has been acquired under the attachment by reason of failure to file notice of the same in the office of the clerk of the County of Wyoming under § 649 of the Code of Civil Procedure of New York; (2) that the threatened sale will throw a cloud on the title of the receivers, and on these grounds prays for an injunction restraining the marshal from selling the property, which was granted below (106 App. Div. 506, 94 N. Y. Supp. 937). *Held*, the injunction should be vacated. *Beardslee et al.* v. *Ingraham et al.* (1906), — N. Y. —, 76 N. E. Rep. 476.

An injunction against a marshal is in effect an injunction against the federal tribunal itself. *Central National Bank* v. *Stevens*, 169 U. S. 432; *Peck* v. *Jenness*, 7 How. 612; *Riggs* v. *Johnson County*, 6 Wall. 166; *Moran* v. *Sturges*, 154 U. S. 256. State courts cannot enjoin proceedings in the courts of the United States. *Morgan* v. *Sturges*, supra (on p. 274); *Covell* v. *Heyman*, 111 U. S. 176; *Freeman* v. *Howe*, 24 How. 454. But the proposition which led the courts below to sustain the injunction is that the levy of an attachment upon real estate gives to the court from which the process issues neither actual nor constructive possession of the property, and hence that